A right to ask questions and a power to compel answers under the sanction of ss. 176 and 177 of the Penal Code are two entirely different things, and s. 123 of the Criminal Procedure Code is only a special power in so far as it compels answers, and it does not compel answers to any police officer in the case of a non-seizable offence unless the sanction of the Public Prosecutor has been obtained under s. 118, sub-s. 2 or to any officer below the rank of Inspector in the case of a seizable offence.

In the present case, as there was no investigation under Chapter XIII of the Criminal Procedure Code, there is nothing expressly to exclude the answers given by the accused prior to his arrest so long as those answers do not amount to a confession, but does this fact conclude the matter? I confess to having wavered in my view and I have not had the advantage of hearing argument on the point, and I feel the force of Sir Lancelot Elphinstone's reasoning even though the facts before him were very different from the facts in the present case.

What the detective was investigating was in fact a seizable offence. If he was acting under the direction of an Inspector the answers would not have been admissible, how then can they be admissible when they were given in the course of an investigation conducted by the detective without reference to or guidance from an inspector?

On the other hand we have the general principle that statements not being confessions are admissible unless they are made to a police officer in the course of a police investigation made under Chapter XIII. If the statements were not made during such an investigation they are not expressly excluded, and if this conclusion is illogical or unreasonable it is for the legislature to delete the words "under this Chapter" in s. 124.

I follow the decision of Aitken, J. in *Tan Hoe Seng's* case and hold that if the accused was not under arrest at the time when he made the statement and if the statement was not made in the course of an investigation under Chapter XIII of the Criminal Procedure Code and if the statement was not a confession, the statement made by the accused in answer to the detective's or constable's question is admissible in evidence.

Order accordingly.

IN RE THE A. B. CLUB.

[Appeal from Assessment of War Tax (Aitken, J. (Chairman), F. M. Edmonds and R. Burns (Commissioners)) October 21, 1941]

War Tax Ordinance Ss. 2, 7, 8—meaning of "Association" and "business"—whether contributions of members of a club liable to War Tax.

The questions raised in this case were whether an unincorporated member's club was an association for the purposes of the War Tax Ordinance, whether it could be said to carry on "a business" within Section 2 of the Ordinance and whether the contributions made by the members to the club's financial resources could properly be regarded as part of its income and so liable to war tax.

Held, (1) that the club was an association within the meaning of that term as defined in Section 2 of the Ordinance, because it did undoubtedly consist of a number of persons who were associated together for the purpose of one or more common objects.

(2) that on the facts the club did carry on a business in the Colony as it provided, maintained and organised facilities for sports and also conducted an extensive catering business.

(3) that contributions made by its own members to a club's financial resources could not properly be regarded as part of its income and that they were not liable to war tax.

K. E. W. Hatchard for the A. B. Club.

E. Tongue (Collector-General) in person.

The judgment of the Board of Commissioners was as follows:—

The A. B. Club is a well known club at Singapore which not only provides enviable sporting and social facilities for its members, who now number over 1,000, but also the advantages of food and liquid refreshment on convenient premises and the amenities of a hairdressing saloon.

In constitution it is an unincorporated member's club, that is, an association of persons each of whom contributes to the funds out of which the very considerable expenses of conducting the Club are paid. It is not recognised as having any legal existence apart from the members of which it is composed except, perhaps, for the purposes of the War Tax Ordinance; and that is one of the questions which we have to decide.

There are several classes of members, and though all of them except, perhaps, Honorary Members, contribute in some way or other to the Club funds, it seems to us that the property and funds of the Club probably belong to the Ordinary and Life Members, who are the only members entitled to take an active part in the management of the Club. It is only upon

a dissolution, however, that the individual interests of members in the Club funds and property become capable of realization; so that we need not endeavour to state those rights with any precision now. It is sufficient for us to say that some or all of the Club members are jointly entitled to all its funds and property, and that until dissolution no member has any right which he or she can enforce except the right to use the Club's premises and playing fields, and the right to enjoy the other privileges and advantages of membership in accordance with the Club's rules.

The contentions of the Collector General may be summarised as follows:—

> The A. B. Club is an "association within the meaning of that term as defined in section 2 of the War Tax Ordinance, and carries on a "business" in the Settlement of Singapore; see the wide definition of "business" in the same section. The Club is therefore liable to pay war tax on the net profits of its business arising in the Colony, that is, on its income as defined in section 2 of the Ordinance, and those net profits for the year ending the 30th September, 1940, amount to $17,445.94. By virtue of Schedule A to the Ordinance the appropriate rate of war tax on that amount is 7% and 7% of $17,445.94 equals $1,221.15.

The contentions put forward by Mr. Hatchard on behalf of the Club may be summarised thus:—

> Though the Club may be an "association" as that term is defined in section 2 of the Ordinance, yet it cannot properly be regarded as carrying on a business because it exists solely for pleasure and does not seek to make any profit out of its activities. Moreover, it has no legal existence apart from its members, and therefore all contributions made by them towards meeting the Club's expenses cannot be treated as income because they are payments made by the members to themselves; they do not come in from outside as all true income must do. The Club was in receipt of a certain amount of real income during the year ending on the 30th September, 1940, which arose out of grants and other payments made by outside bodies, gate takings and interest on investments and to which must be added the net annual value of the Club House. The total amount of such sums of money only equals $4,349.55, which is below the lowest taxable income mentioned in Schedule A.

Such are, in essence, the respective cases for the Collector General and the Club, and each party admits the correctness of the other's figures provided that the basis on which they are calculated is the true one.

Now it seems to be perfectly clear that the Club is an "association" within the meaning of that term as defined in section 2 of the Ordinance, because it does undoubtedly consist of a number of persons who are associated together for the purpose of one or more common objects.

The next question is, does that association carry on a "business" in the Colony and when considering this question we must bear in mind that the term "business", which in its ordinary grammatical sense is a word comprehending many forms of human activity, is declared by section 2 of the Ordinance to include "profession, vocation, trade, manufacture, adventure, undertaking and concern."

In our opinion the A. B. Club, in its associate capacity, does carry on a business in the Colony. If it did no more than provide, maintain and organise the facilities for cricket, tennis, bowls, rugby football and association football which it does provide, maintain and organise, we should be inclined to regard it as carrying on a business at Singapore, because the work involved in the organisation of pleasure on such a scale amounts to a business and requires businesslike attributes if it is to be done at all successfully. But the Club, in its associate capacity, does far more than that. It conducts an extensive "catering business", to use a commonplace term, and a hairdressing saloon, as well as providing facilities for indoor amusements and social amenities. These varied and extensive activities require a considerable staff of paid servants, a systematic organisation, a proper system of book-keeping, and constant trained supervision. If the Club, in its associate capacity, does not carry on a business in the Colony, it is difficult to find any other single word which expresses the sum total of its associate activities so accurately.

And so we come to what is, we believe, Mr. Hatchard's strong point, and that is, concisely, his contention that no contributions made by its members towards meeting the Club's expenses, whether by way of subscriptions, playing fees, payments for food, drink or tonsorial services, can properly be regarded as income because the A. B. Club consists of, and cannot be distinguished from, its members.

If the Imperial Income Tax Acts applied to these Settlements and not the War Tax Ordinance, there can be no doubt that Mr. Hatchard's strong point would prove to be an impregnable defence to any attempt to treat members' contributions as club income. But the Imperial Income Tax Acts are not applicable here, and the War Tax Ordinance is; so that we have got to consider whether the provisions of the latter differ from the Imperial Act provisions on the point and indicate, with sufficient clarity, an intention to treat such contributions as income.

It may be, as Mr. Tongue contends, that the War Tax Ordinance attempts to spread the net a little more widely than the Imperial Income Tax Acts; but both here and in Britain the tax is a tax on income,

and there is very little in the way of income above the low limit now in force in Britain which escapes the tax gatherers who function there. In Britain, to quote from page 1 of the 8th edition of *Konstam's* "The Law of Income Tax", income tax is "estimated according to sets of rules which vary according to the source of the income; many of these sets of rules are highly artificial, so that income for income tax purposes does not by any means necessarily correspond with income in the colloquial sense of money which the receipient receives in the year and which he can spend or save."

These sets of rules, to which Mr. Konstam refers, are not only highly artificial in some respects but are also exceedingly complicated in others; and many of them have been the subject of judicial explanation and interpretation in a vastly numerous series of decisions which are still growing in no half hearted manner. By way of contrast our local Legislature has sought to rely on a very wide definition of "income" in section 2 of the War Tax Ordinance; a short section—section 5—making "every company, association or person" resident or doing business in the Colony liable to a "War Tax" in respect of income at the rate specified in Schedule A to the Ordinance; and two fairly lengthy sections—sections 7 and 8—providing, respectively, what deductions may and may not be made from "income" for the purposes of calculating the amount on which tax is payable.

A careful study of the definition of "income" in our Ordinance reveals nothing contrary to the general principle, so long recognised and acted upon in Britain, that the contributions made by its own members to a club's monetary resources are not liable to income tax. It would seem, therefore, that if the Ordinance does contain any indications that such contributions are liable to war tax, they are to be found in sections 7 and 8.

That appears to be Mr. Tongue's view, because he has referred us to section 7 (g) and section 8 (c) as indicating an intention, on the part of the Legislature, to treat such members' contributions as taxable income.

Section 7 (g) in its present form reads as follows:—

"In calculating the income on which a company, association or person shall pay the tax a deduction shall be made in respect of any income which a company, association or persons enjoys as a member of a company incorporated in the Colony or the Federated Malay States or as a member of an association when such company or association is liable to the tax under this Ordinance or under the Federated Malay States War Taxation Enactment, 1941."

We do not understand how those provisions, which appear to be enacted for the purpose of preventing the same income being taxed twice over, can help Mr. Tongue's case.

So we come to section 8 (c) which reads:—

"A deduction shall not, in any case, be made in respect of any sums credited or paid as salaries by any association to any of its members, or any sums drawn by, credited to or set aside for the benefit of such members."

It seems to us that full effect can be given to these provisions without in any way infringing the principle that the contributions made by its own members to a Club's financial resources cannot properly be regarded as part of its income. Mr. Tongue suggests that this section 8 (c) shows that our Ordinance treats an Association as being a separate and distinct person from its members for the purposes of war tax. We agree, indeed we think that there are other provisions in the Ordinance clearly indicating that such an "association" as a club is liable to war tax provided that its annual income amounts to at least $4,800. What we cannot see is that such liability to tax transmutes into income that which has never hitherto been so regarded, because many Clubs are in receipt of genuine income quite apart from subscriptions and other recurrent contributions paid by their own members. That this is so appears clearly enough from the facts of this particular case, and if the Singapore Cricket Club's undoubted income for the year ended the 30th September, 1940 had been larger by the amount of $450.45, it would have been liable to tax and could not have escaped liability by attempting to make any of the deductions forbidden by section 8 (c).

We would also observe that there are no provisions in our Ordinance in any way corresponding with the provisions which were introduced into the Imperial Finance Act, 1933, for the purpose of rendering some part of the profits of Co-operative Societies derived from trading with their own members liable to income tax.

In the result, and for the reasons set out above, we think that this appeal succeeds and that the assessment made by the Collector on the A. B. Club must be cancelled.

Order accordingly.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.